

# Restructuring & Insolvency 2021

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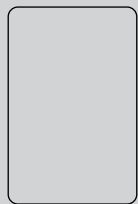
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# Restructuring & Insolvency 2021

**Contributing editors****Catherine Balmond and Katharina Crinson**Freshfields Bruckhaus Deringer

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Lexology Getting The Deal Through is delighted to publish the 14th edition of *Restructuring & Insolvency*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Ireland and Taiwan.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Catherine Balmond and Katharina Crinson of Freshfields Bruckhaus Deringer, for their assistance with this volume.



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# Kazakhstan

Dinara Otegen

GRATA International

## GENERAL

### Legislation

- 1 | What main legislation is applicable to insolvencies and reorganisations?

The main legal act governing the insolvency of legal entities in Kazakhstan is the Law of the Republic of Kazakhstan 'On Rehabilitation and Bankruptcy' No. 176-V dated 7 March 2014 as amended (the Bankruptcy Law). The Bankruptcy Law contains the types of insolvency proceedings, insolvency criteria, rights and obligations of the insolvent, creditors, temporary and bankruptcy managers.

The Bankruptcy Law was developed with the technical assistance of the World Bank, and amendments made to the Bankruptcy Law in December 2019 aimed at further strengthening creditors' and debtors' rights in a balanced manner. There is clearly currently better protection for both creditors' and debtors' assets in Kazakhstan.

There are three main methods of dealing with company insolvency in Kazakhstan under current Kazakhstan law in practice:

- A restructuring procedure is a judicial procedure whereby the 'indebtedness regulation agreement' is executed between the debtor and all its creditors to agree on deferral or payment by instalments of the debtor's obligations, assignment of the rights of claim of the debtor, writing off the penalty (interest or fines). The debtor has right to make a decision on the restructuring of its debt only in the event of temporary insolvency provided that there are no court-initiated cases of rehabilitation or bankruptcy. The restructuring procedure is initiated by the court based on the application of the debtor itself. The restructuring procedure is preferable in cases where the debtor has only one or a limited number of creditors so it is easier to negotiate and agree the terms of debt restructuring. The debtor can file an application to the court for the initiation of this procedure provided that neither the debtor nor its creditors filed an application to the court for initiation of either rehabilitation or bankruptcy.
- A rehabilitation procedure is a judicial procedure, under which reorganisational, organisational-economic, managerial, investment, technical, financial-economic, legal and other measures not in breach of Kazakhstan's legislation are applied to the insolvent debtor to restore the debtor's solvency to prevent its liquidation.
- A bankruptcy procedure is initiated by court order, imposing stays on creditor executions and other freezes, and involving a disposal of the debtor's assets, the distribution of the proceeds to creditors in the payment order established by the Bankruptcy Law, and dissolution of the debtor company.

The restructuring and rehabilitation procedures are intended to rescue the debtor, while the bankruptcy procedure (ie, liquidation) punishes the debtor.

### Excluded entities and excluded assets

- 2 | What entities are excluded from customary insolvency or reorganisation proceedings and what legislation applies to them? What assets are excluded or exempt from claims of creditors?

The regulation of the insolvency proceedings of the state enterprises and institutions, accumulative pension funds, banks, insurance (reinsurance) organisations are excluded from the Bankruptcy Law.

Insolvency proceedings of financial organisations have their own regulations, for example, the Law of the Republic of Kazakhstan 'On Banks and Banking Activities in the Republic of Kazakhstan' No. 2444 dated 31 August 1995 regulates the insolvency proceeding of the banks, the Law of the Republic of Kazakhstan 'On Insurance Activities' No. 126 dated 18 December 2000 regulates the insolvency proceeding of insurance companies, the Law of the Republic of Kazakhstan 'On Pension Provision in the Republic of Kazakhstan' No. 105-V dated 21 June 2013' regulates insolvency proceedings of pension funds.

In addition to that, there are legal entities to which the Bankruptcy Law applies with some specific features contained in the specific legal acts. For example, the Law of the Republic of Kazakhstan 'On the Development of the Cotton Industry' No. 298-III dated 21 July 2007 provides specific features for the cotton processing organisations, the Law of the Republic of Kazakhstan 'On Grain' No. 143-II dated 19 January 2001 for grain receiving enterprises and the Law of the Republic of Kazakhstan 'On Natural Monopolies' No. 204-VI dated 27 December 2018 for natural monopoly entities.

The Bankruptcy Law provides for an exhaustive list of property that, by virtue of the law, cannot be included in the property estate of the insolvency entity. These properties are:

- material assets of the state material reserve;
- allocated assets that are collateral for the obligations of a special financial company for project financing and collateral for bonds of a special financial company for securitisation in accordance with the legislation of Kazakhstan on project financing and securitisation; and pledged property that is the following collateral for mortgage bonds: the right to claim for housing mortgage loan agreements (including mortgage certificates), as well as government securities of Kazakhstan in cases where ownership of these bonds arose from their holders or passed to them under transactions or other grounds provided for by legislative acts of Kazakhstan. The specified property and allocated assets are transferred by the bankruptcy administrator to the representative of mortgage bond holders, the representative of creditors or bondholders, determined in accordance with the legislation of Kazakhstan on project financing and securitisation, to satisfy the creditors' claims;
- property sold to the state Islamic special financial company on the basis of a decision of the government of Kazakhstan;

- funds of liquidation funds created in accordance with the legislation of Kazakhstan on subsoil and subsoil use;
- property that is part of the object of a public-private partnership, including concessions;
- reduction quotas for units of emission, certified emission reductions, internal emissions reduction, absorption of greenhouse gases provided for by the Environmental Code of Kazakhstan;
- the pledged property in the case of its transfer to the pledged creditor in the manner and on the conditions provided for in the Bankruptcy Law;
- rights to temporary gratuitous and temporary short-term paid land use (lease);
- financial instruments of a client (clearing participant) of a clearing organisation, which are full or partial collateral for obligations under transactions, margin contributions, contributions to clearing (guarantee or reserve) funds provided for by the legislation of the Republic of Kazakhstan on the securities market;
- voting shares (stakes in authorised capital) of a legal entity carrying out activities to ensure shared construction of a residential building (residential building); and
- the subject of leasing, except for the case when a meeting of creditors makes a decision on early redemption of the subject of leasing.

### Public enterprises

- 3 | What procedures are followed in the insolvency of a government-owned enterprise? What remedies do creditors of insolvent public enterprises have?

Government-owned enterprises (state enterprises) are excluded from the scope of application of the Bankruptcy Law and cannot be subject to insolvency proceedings.

### Protection for large financial institutions

- 4 | Has your country enacted legislation to deal with the financial difficulties of institutions that are considered 'too big to fail'?

Yes, back in 2009 Kazakhstan's banking system has been severely hit by the global financial crisis so to save the BTA Bank, at that time considered as too-big-to fail bank, a special law has been adopted to introduce a new legal framework similar to the corporate rescue legislation in many jurisdictions, such as the United Kingdom and the United States, and that was intended to ensure that bank restructurings are recognised internationally.

### Courts and appeals

- 5 | What courts are involved? What are the rights of appeal from court orders? Does an appellant have an automatic right of appeal or must it obtain permission? Is there a requirement to post security to proceed with an appeal?

Cases related to bankruptcy, rehabilitation and restructuring are considered by the specialist regional interdistrict economic courts, and the cities of Almaty and Nur-Sultan, and are not subject to consideration in absentia. The appellant has an automatic right of appeal. An appeal may be filed against a court decision that has not entered into legal force by the parties, other persons participating in the case and also by persons who were not involved in the case but regarding whose rights and obligations the court made a decision. An appeal may be filed within one month of the date of the final decision of the court, except for the cases when such appeal is filed by persons who did not participate in the trial. In such cases, the appeal may be filed within one month of the date of sending them a copy of the court decision.

There is no requirement to post security to proceed with an appeal.

## TYPES OF LIQUIDATION AND REORGANISATION PROCESSES

### Voluntary liquidations

- 6 | What are the requirements for a debtor commencing a voluntary liquidation case and what are the effects?

The Kazakhstan laws provide the right for the debtor to voluntarily establish the debtor as bankrupt based on the debtor's application to the court. The basis for the debtor's application to the court for declaring the debtor as bankrupt and liquidation with the initiation of bankruptcy proceedings is debtor's persistent insolvency.

Insolvency is persistent if the debtor's liabilities exceed the value of its property at the date of filing an application with the court and at the beginning of the year in which the application was filed, as well as at the beginning of the year preceding the year of filing the application, if the application was filed by the debtor in the first quarter of the calendar year.

From the moment of issuing a decision *on initiating* the bankruptcy proceedings:

- the owner of the debtor's property (or the body authorised by it), the founders (participants), and all the bodies of the legal entity are prohibited from using and selling the assets outside the ordinary commercial operations;
- execution of the previous decisions of courts, arbitration courts, state revenue authorities, as well as the owners (founders, participants) or bodies of the debtor in respect of the property shall be suspended, except for payments to persons to whom the debtor is liable for damage to life or health without taking into account claims for moral damage;
- the accrual of penalties (penalties, fines) for all types of debts of the debtor is suspended;
- any claims of creditors against the debtor may only be brought within the bankruptcy proceedings, provided for by the Bankruptcy Law, except for claims for execution of guarantees and sureties by third parties and enforcement of pledge in cases where the pledgor is a third party;
- recovery of money from the bank accounts of the debtor under the claims of creditors, state revenue authorities and other competent authorities engaged in the calculation or collection of obligatory payments to the budget, including the claims to be satisfied by an uncontested (acceptance-free) procedure, as well as foreclosure of the debtor's property are not allowed; and
- alienation of shares or participatory interests in the debtor's charter capital is prohibited.

The resolution of the court on the bankruptcy of the debtor results in the following legal implications:

- the debtor may not use and realise its property and repay its debt;
- all debt obligations shall be considered as due;
- the accrual of fines and interests on all obligations of the debtor is terminated;
- all court disputes of a proprietary nature in relation to the debtor are terminated;
- all claims may be made against the debtor only in bankruptcy proceedings (except claims where third persons are acting as guarantors or pledgors as well as foreclosure on the subject of pledge in cases where third persons are acting as pledgors);
- on the basis of the administrator's application and the submitted copy of the court's decision on declaring the debtor bankrupt, all restrictions and encumbrances on the debtor's property (collection orders issued to the debtor's accounts, arrests on property, etc) are removed without making the appropriate decisions of the authorities that imposed them;

- all arrests and liens on the debtor's property are eliminated upon application of the administrator; and
- any new arrests on the property of the debtor may be imposed only in the case of claims for invalidation of the transaction and reclamation of property from the illegal possession of the debtor.

### Voluntary reorganisations

#### 7 | What are the requirements for a debtor commencing a voluntary reorganisation and what are the effects?

The debtor has two options to 'rescue' itself through applying restructuring and rehabilitation procedures.

Restructuring can be initiated by the court based on the application of the debtor in the case of temporary insolvency provided that no application for rehabilitation or bankruptcy procedure has been filed to the court in relation to the debtor.

Insolvency is a temporary if, on the date of filing:

- the application liabilities to creditors for claims for compensation for harm caused to life and health, recovery of alimony;
- obligations for remuneration of labour;
- payment of compensation under employment contracts;
- payment of arrears in social contributions to the State Social Insurance Fund;
- mandatory pension contributions and mandatory professional pension contributions; or
- deductions or contributions for compulsory social health insurance, as well as remuneration to authors for an employee's invention, utility model or industrial design
- had not been executed within three months of the date of their due date, or obligations to other creditors have not been fulfilled within four months of their due date.

From the time of application for the restructuring procedure by the court:

- the accrual of fines and interests on all obligations of the debtor is terminated;
- the creditors are prohibited from filing an application to the court for the initiation of the bankruptcy proceedings within the period of conclusion of the restructuring agreement and, provided that the court approves such agreement, until its termination if the debtor performs it properly; and
- the debtor is prohibited from performance of any transactions with its property.

The purpose of the restructuring procedure is the conclusion of the restructuring agreement between the debtor and all its creditors. This agreement shall be concluded by the court within two months of applying for the restructuring procedure for a maximum period of three years. The restructuring agreement shall contain terms and conditions of performance by the debtor of its obligations to its creditors. The restructuring agreement can be concluded only upon consent of all the creditors. The concluded restructuring agreement is subject to final approval by the court.

From the moment of approval by the court of the restructuring agreement:

- the accrual of fines and interests on all obligations of the debtor is terminated;
- all limitations placed on the bank accounts of the debtor by state bodies shall be automatically lifted;
- enforcement of court and arbitration decisions is terminated (except claims for health or life damage not including moral damage that have become due prior to conclusion of the restructuring agreement); and

- any new arrests on the property of the debtor may be imposed only in the case of claims for invalidation of the transaction and reclamation of property from the illegal possession of the debtor.

Rehabilitation can be initiated by the court based on the application of the debtor in the case of temporary insolvency.

The rehabilitation plan shall be approved by the creditors within three months of the court ruling on the introduction of a rehabilitation procedure. The tenor of rehabilitation (which generally can be up to five years) shall be established by the court when making a ruling on the approval of the rehabilitation plan and may be extended by an additional six months at the request of the rehabilitation manager, with the consent of the creditors.

From the moment of issuing a decision on initiating the rehabilitation proceedings:

- the owner of the debtor's property (or the body authorised by it), the founders (participants), and all the bodies of the legal entity are prohibited from using and selling the assets outside ordinary commercial operations;
- execution of the previous decisions of courts, arbitration courts, state revenue authorities, as well as the owners (founders, participants) or bodies of the debtor in respect of the property shall be suspended, except for payments to persons to whom the debtor is liable for damage to life or health without taking into account claims for moral damage;
- the accrual of penalties (penalties, fines) for all types of debts of the debtor is suspended;
- any claims of creditors against the debtor may only be brought within the rehabilitation proceedings, provided for by the Bankruptcy Law, except for claims for execution of guarantees and sureties by third parties and enforcement of pledge where the pledgor is a third party;
- recovery of money from the bank accounts of the debtor under the claims of creditors, state revenue authorities and other competent authorities engaged in the calculation or collection of obligatory payments to the budget, including the claims to be satisfied by an uncontested (acceptance-free) procedure, as well as foreclosure of the debtor's property are not allowed; and
- alienation of shares or participatory interests in the debtor's charter capital is prohibited.

From the date of entry into force of the court decision on the application of the rehabilitation procedure, the following apply:

- committing transactions with the assets outside of ordinary commercial operations without prior coordination with the temporary manager is prohibited;
- accrual of penalties (fines, penalties) is terminated on all types of debts of the debtor, as well as the interest on the loans received; and
- execution of the previous decisions of courts, arbitration courts, state revenue authorities, as well as the owners (founders, participants) or bodies of the debtor in respect of the property shall be suspended, except for payments to persons to whom the debtor is liable for damage to life or health without taking into account claims for moral damage the due date for which occurs after application of the rehabilitation procedure.

## Successful reorganisations

- 8 | How are creditors classified for purposes of a reorganisation plan and how is the plan approved? Can a reorganisation plan release non-debtor parties from liability and, if so, in what circumstances?

### Restructuring

During the restructuring an indebtedness regulation agreement shall be concluded between the debtor and all its creditors. Such agreement shall be concluded within two months from the moment of application of the indebtedness regulation procedure by the court for a maximum tenor of three years. The indebtedness regulation agreement shall contain terms and conditions of performance by the debtor of its obligations to its creditors. The indebtedness regulation agreement can be concluded only upon consent of all the creditors. The concluded agreement is subject to final approval by the court. There is no classification of creditors in an indebtedness regulation agreement, all creditors shall agree on one of the following terms of satisfaction of creditors' claims:

- deferral and (or) payment by instalments in the performance of the debtor's obligations;
- assignment of the rights of claim of the debtor;
- full or partial debt forgiveness;
- writing off the penalty (interest or fines);
- reduction of the amount of remuneration for received loans; and
- satisfaction of the claims of the creditor (creditors) in other ways that are not contrary to the legislation of Kazakhstan.

### Rehabilitation

The rehabilitation plan shall be developed by the debtor together with the creditors and the rehabilitation manager within three months of the court decision on the introduction of a rehabilitation procedure. The debtor shall submit the rehabilitation plan to the court after approval by the meeting of creditors no later than three months from the court decision on the introduction of a rehabilitation procedure.

The tenor of rehabilitation (that generally can be up to five years) shall be established by the court when making a decision on the approval of the rehabilitation plan and may be extended by an additional six months at the request of the rehabilitation manager, with the consent of the creditors.

Kazakh law provides the following classification of creditors and order of the satisfaction of their claims:

- claims for compensation for harm caused to life or health are satisfied; to collect alimony; on remuneration and payment of compensation to persons who worked under an employment contract, with the payment of arrears on social contributions to the State Social Insurance Fund, compulsory pension contributions, compulsory professional pension contributions, on deductions and (or) contributions to compulsory social health insurance; on payment of remuneration to authors for service inventions, utility models, industrial designs;
- claims of secured creditors, claims arising from the receipt of the loan by the bankruptcy manager during the bankruptcy procedure, as well as claims of a clearing organisation performing the functions of a central counterparty, arising as a result of transactions previously concluded and not executed by a bankrupt, which is a clearing member of this clearing organisation, with the participation of a central counterparty;
- debts on taxes and other obligatory payments to the budget;
- claims of other unsecured creditors on commercial agreements;
- claims for indemnification and collection of penalties; and
- claims of creditors, declared later than the period established by the Bankruptcy Law.

It is worth mentioning that the secured creditor may directly take over the collateral in kind. In addition, in a rehabilitation procedure, the secured creditor can apply to the court to levy execution on the pledged property if:

- the debtor committed breaches of the Bankruptcy Law that threaten the secured creditor's interests;
- the repayment schedule has been breached in relation to the secured creditor;
- the value of the pledged property has decreased, which caused a breach of the secured creditor's interests; and
- the pledged property is not required for the continuation of business activity by the debtor or for the implementation of the rehabilitation plan.

### Involuntary liquidations

- 9 | What are the requirements for creditors placing a debtor into involuntary liquidation and what are the effects? Once the proceeding is opened, are there material differences to proceedings opened voluntarily?

The basis for the creditor's application to the court for declaring the debtor as bankrupt and liquidation with the initiation of bankruptcy proceedings is the debtor's unfulfilled monetary obligation to the creditor on the basis of a judicial act or an executive document on the collection of money from the debtor or recognition of the debt by the debtor.

The proceedings are the same as proceedings opened voluntarily.

### Involuntary reorganisations

- 10 | What are the requirements for creditors commencing an involuntary reorganisation and what are the effects? Once the proceeding is opened, are there any material differences to proceedings opened voluntarily?

Restructuring can be initiated by the court based on the application of the debtor only.

Rehabilitation can be initiated by the court based on the application of the creditor in the case of temporary insolvency.

Insolvency is a temporary if, on the date of filing the application liabilities to creditors for claims for compensation for harm caused to life and health, recovery of alimony, obligations for remuneration of labour, payment of compensation under employment contracts, payment of arrears in social contributions to the State Social Insurance Fund, mandatory pension contributions and mandatory professional pension contributions, deductions or contributions for compulsory social health insurance, as well as remuneration to authors for an employee's invention, utility model, industrial design were not executed within three months of the due date or obligations to other creditors have not been fulfilled within four months of their due date.

The proceedings are the same as proceedings opened voluntarily.

### Expedited reorganisations

- 11 | Do procedures exist for expedited reorganisations (eg, 'prepackaged' reorganisations)?

No.



## Unsuccessful reorganisations

12 | How is a proposed reorganisation defeated and what is the effect of a reorganisation plan not being approved? What if the debtor fails to perform a plan?

### Restructuring

To conclude an indebtedness regulation agreement, such agreement shall be agreed by the debtor with all its creditors. If one of the creditors disagrees with the terms of the agreement, the agreement cannot be concluded. The debtor has the right either to renegotiate the terms of an indebtedness regulation agreement so all its creditors will agree on it, or to continue the ordinary course of business. In the case of the debtor's violation of the terms of a concluded indebtedness regulation agreement, the creditor has the right to apply to the court for termination of indebtedness regulation agreement. If the indebtedness regulation agreement is terminated by the court, the debt restructuring procedure is considered completed, and the consequences of applying the restructuring are terminated from the date of entry into force of the court decision on the termination of the debt restructuring agreement.

### Rehabilitation

If the rehabilitation plan is not approved by the creditors, the rehabilitation manager applies to the court to terminate the rehabilitation procedure. In the case of termination of the rehabilitation procedure the court takes a decision declaring the debtor as bankrupt and liquidation it with the initiation of bankruptcy proceedings.

If the rehabilitation proceeding is initiated and the rehabilitation plan is approved by the creditors, the management of the debtor will be performed by the rehabilitation manager, who shall, inter alia, ensure the rehabilitation plan's implementation. If the rehabilitation manager fails to action the rehabilitation plan, the creditors have the right to terminate the contract with the rehabilitation manager and appoint the new rehabilitation manager for implementation of the rehabilitation plan.

In addition to the above, the creditor has the right to apply to the court for termination the rehabilitation procedure if (1) there are grounds confirming that the implementation of the debtor's rehabilitation plan is detrimental to the creditor's property interests, (2) there are grounds confirming that the actions (inaction) of the rehabilitation manager are detrimental to the creditor's property interests, or (3) there is improper notification of the meeting of creditors.

### Corporate procedures

13 | Are there corporate procedures for the dissolution of a corporation? How do such processes contrast with bankruptcy proceedings?

The Civil Code provides procedures for the dissolution of the legal entity, which can be made by the decision of the general meeting of participants (shareholders) or the sole participant (shareholder). Liquidation of companies is carried out by a liquidation committee. In contrast with restructuring, rehabilitation and bankruptcy proceedings where the creditors are the main decisionmakers, the liquidation commission is appointed by the general meeting of participants (shareholders) or the sole participant (shareholder). From the moment of the liquidation commission's appointment, the powers to manage the property and affairs of the legal entity are transferred to it.

The liquidation commission shall publish information on the liquidation of a legal entity, as well as the procedure and deadline for filing claims by its creditors in periodicals distributed throughout Kazakhstan. The term for filing claims cannot be less than two months from the date of publication of the announcement of liquidation. The liquidation commission takes measures to identify creditors and collect debts, and also notifies creditors in writing about the liquidation of a legal entity.

After the expiration of the period for the presentation of claims by creditors, the liquidation commission draws up an interim liquidation balance sheet, which contains information on the composition of the property of the legal entity being liquidated, the list of claims filed by creditors, as well as the results of their consideration, which shall be further approved by a general meeting of participants (shareholders) or the sole participant (shareholder).

Generally, payments to creditors shall be made by the liquidation commission in the following order of priority:

- claims for the payment of alimony withheld from wages or other income, as well as claims of citizens to whom the liquidated legal entity is responsible for causing harm to life or health, are satisfied, by capitalising the corresponding time-based payments;
- wages and compensation payments to persons who worked under an employment contract, payment of arrears on social contributions to the State Social Insurance Fund, mandatory pension contributions withheld from wages, mandatory professional pension contributions, or contributions for compulsory social health insurance to the social health insurance fund, as well as payment of remuneration under copyright agreements;
- claims of secured creditors;
- debts on taxes and other obligatory payments to the budget; and
- other creditors.

The secured creditor shall have the right to satisfy its claims by accepting the pledged property in kind.

We also note that there are special rules for the liquidation of a joint stock company established by the Law on Joint Stock Companies.

The property remaining after the satisfaction of the creditors' claims is directed for the purposes specified in the constituent documents of the liquidated legal entity.

Contrary the insolvency proceeding, the liquidation of the legal entity can be made extrajudicially as a self-liquidating legal entity shall have sufficient funds to satisfy the claims of its creditors.

### Conclusion of case

14 | How are liquidation and reorganisation cases formally concluded?

Liquidation of a bankrupt is considered complete, and a bankrupt entity ceases to exist after it has been entered in the state registers of legal entities. Orders on the exclusion of a bankrupt from the register of legal entities by the relevant bodies shall be sent to the court and the authorised body, as well as to the state revenue body at the bankrupt entity's place of business.

To terminate the rehabilitation procedure, the rehabilitation manager, through a decision of a meeting of creditors, applies to the court with an application to terminate the rehabilitation procedure in relation to the debtor if the purpose of the rehabilitation procedure in relation to the debtor has been achieved or the total amount of the debtor's monetary obligations arising after the application of the rehabilitation procedure exceeded 20 per cent of the total amount of the accounts payable as of the date of the court's decision to apply the rehabilitation procedure. Thus, the rehabilitation procedure is considered terminated when the court makes the respective decision.

## INSOLVENCY TESTS AND FILING REQUIREMENTS

### Conditions for insolvency

#### 15 | What is the test to determine if a debtor is insolvent?

The debtor shall be deemed 'persistent insolvent' (ie, insolvency is persistent if the debtor's obligations exceed the value of its property as of the date of filing an application with the court and at the beginning of the year in which the application was filed), as well as at the beginning of the year preceding the year of filing the application, if the application was filed by the debtor in the first quarter of the calendar year.

### Mandatory filing

#### 16 | Must companies commence insolvency proceedings in particular circumstances?

The company shall apply to the court for declaring the company as bankrupt in the event that the owner of the property of the company, the body of a legal entity authorised by the constituent documents, made a decision on liquidation of the company but the value of the property is not enough to satisfy the creditors' claims in full.

## DIRECTORS AND OFFICERS

### Directors' liability – failure to commence proceedings and trading while insolvent

#### 17 | If proceedings are not commenced, what liability can result for directors and officers? What are the consequences for directors and officers if a company carries on business while insolvent?

If the official violates the obligation to apply to the court for declaring the company as bankrupt in cases when the decision on liquidation was made but the value of the property is not enough to satisfy the creditors' claims in full, such officials bears subsidiary liability in the amount of the bankruptcy's obligations to creditors that remained unfulfilled as a result of the bankruptcy procedure.

The Bankruptcy Law defines official as a member of the board of directors of a joint-stock company, the head (deputy head) of a legal entity, as well as another person who is a member of the collegial executive body of a legal entity, endowed with permanent or temporary powers to manage a legal entity, a chief accountant of a legal entity – a debtor, as well as another person temporarily performing his or her duties.

### Directors' liability – other sources of liability

#### 18 | Apart from failure to file for proceedings, are corporate officers and directors personally liable for their corporation's obligations? Are they liable for corporate pre-insolvency or pre-reorganisation actions? Can they be subject to sanctions for other reasons?

The Kazakhstan laws provide for subsidiary liability of the founder (participant), officials of a legal entity, for bringing the debtor to bankruptcy (ie, premeditated bankruptcy). Premeditated bankruptcy is the actions of a founder (participant), an official committed in the personal interests or interests of other persons to evade the fulfilment of obligations to creditors by alienating or hiding property up to three years before the legal entity is declared bankrupt.

The founder (participant) or an official found guilty of premeditated bankruptcy by way of administrative or criminal proceedings shall bear subsidiary liability to creditors with their property in the amount

of damage established by a judicial act, on the basis of which such a person was found guilty of premeditated bankruptcy by way of administrative or criminal proceedings.

A bankruptcy manager, within 10 working days from the date of entry into force of a judicial act on bringing the founder (participant) and (or) an official to criminal or administrative liability, shall apply to the court with a claim against such a person for bringing him or her to subsidiary liability. The creditor also has the right to apply to the court with a claim if the founder (participant) or an official are found guilty of premeditated bankruptcy in administrative or criminal proceedings after the completion of the bankruptcy procedure.

In addition to the subsidiary liability before the creditors, the founder (participant) or an official may be brought to:

- administrative liability: a fine for an individual in the amount of 200 monthly calculation indices (approximately US\$1,300), for a legal entity – in the amount of 400 monthly calculation indices (approximately US\$2,600); or
- criminal liability if the premeditated bankruptcy caused a major damage – a fine in the amount of up to 3,000 monthly calculation indices (approximately US\$19,500), or correctional labour in the same amount, or engagement in community service for a term of up to 800 hours, or restraint of liberty for a term of up to three years, or imprisonment for the same term, with suspension of the right to hold certain positions or engage in certain activities for up to three years.

### Directors' liability – defences

#### 19 | What defences are available to directors and officers in the context of an insolvency or reorganisation?

The liability of the officials does not occur only based on the person being the official of the bankrupt legal entity. As described above, the liability of officials occurs if the actions of official committed in the personal interests or interests of other persons in order to evade the fulfilment of obligations to creditors by alienating or hiding property within three years before the legal entity is declared bankrupt, for example, sale of assets at price that is significantly worse for the debtor, the transfer of money to one-day firms, etc.

As for another ground for an official's liability (ie, violation of the obligation to apply to the court for declaring the company as bankrupt), the official must prove that the critical situation that the company was in was not deliberately ignored. In this situation, it is very important that the officials have a well-grounded plan for company's recovery from the crisis situation, which may help the official to prove the efforts made by him or her and relieve the official from subsidiary liability.

### Shift in directors' duties

#### 20 | Do the duties that directors owe to the corporation shift to the creditors when an insolvency or reorganisation proceeding is likely? When?

### Restructuring

In the case of restructuring, the duties of directors do not shift to the creditors. The restructuring procedure is managed by the debtor itself, which shall do its best to agree the terms and conclude the indebtedness regulation agreement with all of its creditors. If the debtor performs its obligations under the indebtedness regulation agreement properly, the creditors are not entitled to file an application to the court for the initiation of bankruptcy proceedings against the debtor during the tenor of such agreement.

The court's involvement includes:

- introduction of the indebtedness regulation procedure at the request of the debtor;

- final approval of the indebtedness regulation agreement concluded between the debtor and its creditors;
- cancellation of the indebtedness regulation agreement and consideration of the debtor as bankrupt at the request of the creditors or third parties if the debtor does not perform its obligations thereunder; and
- initiation of bankruptcy proceedings based on the application of the creditors if the debtor does not conclude the indebtedness regulation agreement within the deadline established by law, or if the court refused to approve the indebtedness regulation agreement.

### Rehabilitation

The rehabilitation process is managed by a temporary administrator until approval of the rehabilitation plan by the court and, upon such approval, by the rehabilitation manager. A temporary administrator shall be appointed by the debtor and the agreement with him or her shall be concluded before the debtor applies to the court for application of a rehabilitation procedure. The temporary administrator shall be appointed from the special list kept by the relevant department of the Ministry of Finance of the Republic of Kazakhstan (the Authorised Body).

The temporary administrator is appointed, *inter alia*, for collecting information on the financial condition of the debtor on the basis of accounting documents and financial statements to draw up an opinion on financial stability, submitting to the court an opinion on the financial stability of the debtor, notification of all creditors of the place and date of the first meeting of creditors, organisation and holding the first creditors' meeting.

The authority of the temporary administrator shall terminate upon issuance of the court decision on approval of the rehabilitation plan. Simultaneously with the termination of the temporary administrator's authority, the creditors shall appoint a rehabilitation manager from the special list kept by the Authorised Body, or leave the debtor's current managing bodies. The rehabilitation manages the debtor's activity including, *inter alia*, the right to refuse the performance of certain transactions by the debtor (eg, transactions with affiliates, transactions that seems to detrimentally affect creditors) provided that such transactions have not been fully performed. The authority of the rehabilitation manager applies until the termination of the rehabilitation for whatever reason. The court's involvement includes:

- introduction, suspension and termination of the rehabilitation procedure;
- approval of the rehabilitation plan and any amendments thereto;
- resolving the proprietary claims filed against the debtor; and
- resolving disputes between participants of the rehabilitation.

### Bankruptcy

The bankruptcy proceeding is managed by a temporary manager from the moment of initiation of bankruptcy proceedings until the appointment of the bankruptcy manager by the Authorised Body. A temporary manager shall be appointed by the debtor and this agreement shall be concluded before the debtor applies to the court for application of a bankruptcy procedure, except for the cases established by the Bankruptcy Law when a temporary manager is appointed by the Authorised Body itself. The temporary manager shall be appointed from the special list kept by the Authorised Body. The temporary manager, *inter alia*, shall announce the initiation of bankruptcy proceedings to the Authorised Body, collect creditors' claims and establish the creditors' claims register. In the case of initiation of bankruptcy based on the application filed to the court by a creditor or prosecutor, the temporary manager collects information on the financial position of the debtor and prepares the relevant documents. From the moment of issuance of the court decision on recognition of the debtor as bankrupt, management over property and affairs of the debtor company shall be transferred to the temporary manager. The temporary

manager is entitled, *inter alia*, to identify and challenge the transactions of the debtor concluded before the bankruptcy on the grounds established by the Bankruptcy Law, and request documents from creditors confirming the basis and amount of the stated claims.

In practice, the collection of information of the debtor's financial state takes a long time, and temporary managers cannot complete this within the period established by the law; thereby, the reports on the debtor's financial state are prepared cursorily and conclusions therein are often hasty and incorrect.

The bankruptcy manager is appointed by the Authorised Body based on the candidate approved by the creditors' meeting. The main function of the bankruptcy manager is to develop an asset realisation plan and implement it, satisfy the claims of all the creditors and then to issue the final report on the bankruptcy.

In bankruptcy proceedings, the court, *inter alia*:

- introduces, changes and terminates the bankruptcy proceeding;
- informs the body that carries out the state registration of legal entities, the Authorised Body, the chamber of private bailiffs and the territorial department of the Ministry of Justice at the location of the debtor on the decision on declaring the debtor bankrupt;
- resolves the proprietary claims filed against the debtor;
- resolves disputes between participants of bankruptcy proceedings; and
- at the request of the creditor, examines the validity of the amount of administrative costs or a loan received for the purpose of conducting bankruptcy proceedings.

### Directors' powers after proceedings commence

- 21 | What powers can directors and officers exercise after liquidation or reorganisation proceedings are commenced by, or against, their corporation?

### Restructuring

In the case of restructuring, the directors and officers have the same powers as in ordinary course of business subject to implementation of the indebtedness regulation agreement.

### Rehabilitation

The rehabilitation process is managed by the temporary administrator until the approval of the rehabilitation plan by the court and, upon such approval, by the rehabilitation manager. The creditors shall decide whether to appoint a rehabilitation manager from the special list kept by the Authorised Body or leave the management of the debtor with its current managing bodies.

### Bankruptcy

The bankruptcy proceeding does not provide the possibility of leaving the directors and officers of the debtor to manage the debtor. The bankruptcy proceeding is managed by the temporary manager from the moment of initiation of bankruptcy proceedings until the appointment of the bankruptcy manager by the Authorised Body.

## MATTERS ARISING IN A LIQUIDATION OR REORGANISATION

### Stays of proceedings and moratoria

- 22 | What prohibitions against the continuation of legal proceedings or the enforcement of claims by creditors apply in liquidations and reorganisations? In what circumstances may creditors obtain relief from such prohibitions?

### Restructuring

- From the date of entry into force of the court ruling on the approval of the indebtedness regulation agreement;

- execution of earlier decisions of courts, arbitral awards are terminated, with the exception of payments to citizens to whom the debtor is responsible for causing harm to life or health without taking into account claims for compensation for moral damage, the due date for which has come after the conclusion of an agreement on debt restructuring; and
- imposition of new seizures on the property of the debtor and other restrictions on the disposal of its property are allowed only on claims brought against the debtor for 'invalidating the transaction and reclaiming property from third parties' illegal possession.

### Rehabilitation

From the date of issuing a court ruling on initiating rehabilitation proceedings, the execution of earlier court decisions, arbitral awards, decisions of state revenue bodies, as well as owners (founders, participants), bodies authorised by them or bodies of the debtor in respect of its property are suspended, except for payments to citizens to whom the debtor is responsible for causing harm life or health without taking into account claims for compensation for moral damage. Any claims by creditors against the debtor may be presented only within the framework of rehabilitation procedures provided for by the Bankruptcy Law.

### Bankruptcy

This is the same as for rehabilitation procedure.

### Doing business

- 23 | When can the debtor carry on business during a liquidation or reorganisation? Is any special treatment given to creditors who supply goods or services after the filing? What are the roles of the creditors and the court in supervising the debtor's business activities?

### Restructuring

During the restructuring procedure, the debtor carries on its business without special treatment except for the prohibition on making any transactions for the alienation of property and subject to implementation of the indebtedness regulation agreement.

### Rehabilitation

From the day the court decision on the application of the rehabilitation procedure enters into legal force, the debtor has a right to make property transactions only within the framework of ordinary commercial transactions. After the approval of the rehabilitation plan, the debtor also has the right to make property transactions only within the framework of ordinary commercial transactions, and transactions with property outside the framework of ordinary commercial transactions if such transactions are provided for by the rehabilitation plan and are made with the consent of the meeting of creditors.

In the course of a rehabilitation procedure, the interests of all creditors are represented by a meeting of creditors established in accordance with the Bankruptcy Law.

### Bankruptcy

During the bankruptcy proceedings, the debtor may not carry on a business. In the course of a bankruptcy procedure, the interests of all creditors are represented by a meeting of creditors established in accordance with the Bankruptcy Law.

### Post-filing credit

- 24 | May a debtor in a liquidation or reorganisation obtain secured or unsecured loans or credit? What priority is or can be given to such loans or credit?

### Restructuring

During the restructuring procedure the debtor can generally obtain secured or unsecured loans or credit if such measures are provided and agreed by the creditors in the indebtedness regulation agreement.

### Rehabilitation

During the restructuring procedure the debtor can obtain unsecured loans or credit if such loans or credit are provided and agreed by the rehabilitation plan. The loan will be included in the fourth tier of creditors as 'claims of other unsecured creditors on commercial agreements'.

### Bankruptcy

During the bankruptcy proceedings the bankruptcy manager has the right to receive a loan for bankruptcy proceedings only with the consent of the meeting of creditors.

Claims of creditors arising as a result of a bankruptcy manager receiving a loan during the bankruptcy procedure shall be repaid after full satisfaction of the claims of creditors included in the second priority, the debt to which arose before the initiation of bankruptcy proceedings.

### Sale of assets

- 25 | In reorganisations and liquidations, what provisions apply to the sale of specific assets out of the ordinary course of business and to the sale of the entire business of the debtor? Does the purchaser acquire the assets 'free and clear' of claims or do some liabilities pass with the assets?

The sale of the property of a bankrupt, including the right of claim, is carried out by the bankruptcy manager through an electronic auction in accordance with the sale plan or by direct sales. The procedure for holding an electronic auction and organising of an electronic auction for the sale of bankruptcy property is determined by the Authorised Body. The plan of sale is drawn up by the bankruptcy manager on the basis of the inventory data and the assessment of the bankruptcy estate, as well as the decision of the creditors' committee to put the property up for electronic auction at book value. The bankruptcy manager is obliged to draw up and submit to the creditors' committee a sale plan within the time period established by the creditors' committee.

The property of a bankrupt entity, which was offered for sale, but remained unrealised in accordance with the plan for the sale of property, is subject to transfer in the appropriate order to creditors who did not receive satisfaction of their claims in full, with their consent to the common share ownership at the starting price specified in the plan of sale.

In the case of direct sale of property of a bankrupt, as well as of a bankrupt enterprise, the price and other conditions of sale, as well as the buyer and the term for concluding a purchase and sale agreement with the purchaser, shall be determined by a unanimous decision of the meeting of creditors.

In cases where there is a property, the value of which will significantly decrease during the period before the appointment of a bankruptcy manager (perishable goods, livestock and other goods requiring urgent sale), a temporary manager no later than three business days from the date of identification of such property shall draw up a plan for the sale of property and submit it for approval to the Authorised Body. The Authorised Body shall, within two business days, consider the application by the temporary manager and make a decision

whether to approve or refuse the sale plan with immediate notification of the temporary manager of the decision. The temporary manager shall sell the property in accordance with the approved sale plan.

The Bankruptcy Law also provides for the sale of the bankrupt enterprise as a whole. For the purposes of the Bankruptcy Law, a bankrupt enterprise means a property complex used for carrying out entrepreneurial activities and including all types of property, including buildings, structures, equipment, inventory, raw materials, products, the right to a land plot, claims, debts and also rights to designations that individualise its activities (company name, trademarks) and other exclusive rights.

The sale of an enterprise is carried out by direct sale. The sale of the enterprise is formalised by the contract of sale of the enterprise, which is concluded by the bankruptcy manager with the buyer.

When selling an enterprise, payment in accordance with the contract for the sale of the enterprise shall be made by the buyer within 30 business days from the date of signing the contract. Within three business days from the date of payment, the bankruptcy manager shall transfer the proceeds from the sale to the owner of the property or the founder (participant) minus the amount of administrative expenses used during the bankruptcy procedure. The transfer of the enterprise by the bankruptcy manager and its acceptance by the buyer are carried out according to the deed of transfer signed by the parties and drawn up in accordance with Kazakh laws.

After the creditors' claims have been satisfied, the bankruptcy manager shall submit to the court a final report on activities agreed with the creditors' meeting. When a bankrupt enterprise is sold, the court approves the final report and takes a decision on declaring the debtor bankrupt and its liquidation.

In both cases above, the purchaser acquires the assets 'free and clear' of claims.

### Negotiating sale of assets

**26** Does your system allow for 'stalking horse' bids in sale procedures and does your system permit credit bidding in sales?

The procedure of sale of assets is performed through an electronic auction, is determined by the Authorised Body and cannot be simply agreed by the debtor and creditor except for the secured creditor who may directly take over the collateral in kind.

After the publication of the information on the electronic auction, the organiser provides everyone with free access to the information on the lot posted on the registry's website, and the seller provides everyone free access to the object of sale. The registration of participants in an electronic auction is carried out on the registry web portal from the date of publication of the information message and ends two hours before the start of the electronic auction.

Before submitting an electronic application, the participant (potential purchaser) shall pay a guarantee fee to the organiser's settlement account. The guarantee fee for participation in the electronic auction for each lot is 15 per cent of the starting price of the lot, but not more than approximately US\$192,500.

Upon confirmation of payment, the registry's website accepts the application and admits the participant to the electronic auction.

If at the time of the start of the electronic auction, fewer than two participants have registered and are in the auction hall, the auction is declared invalid.

An electronic auction is carried out by participants submitting bids and is held until a maximum bid is reached by one of the participants, the level of price change is set by the Authorised Body.

### Rejection and disclaimer of contracts

**27** Can a debtor undergoing a liquidation or reorganisation reject or disclaim an unfavourable contract? Are there contracts that may not be rejected? What procedure is followed to reject a contract and what is the effect of rejection on the other party? What happens if a debtor breaches the contract after the insolvency case is opened?

In restructuring proceedings, the contracts remain valid and shall be performed by the parties. In rehabilitation proceedings, the contracts shall also remain valid and shall be performed by the parties unless they are challenged on the grounds established by the Bankruptcy Law.

The Bankruptcy Law provides that the initiation of bankruptcy proceedings cannot be a ground for early termination or unilateral refusal of the contract, and any agreement between the parties on such early termination or unilateral refusal is invalid.

The Bankruptcy Law is, however, silent on the same issue in the case of rehabilitation. Our interpretation of the law suggests that early termination clauses in the case of rehabilitation will not be upheld by analogy of law.

### Intellectual property assets

**28** May an IP licensor or owner terminate the debtor's right to use the IP when a liquidation or reorganisation is opened? To what extent may IP rights granted under an agreement with the debtor continue to be used?

Kazakh laws do not provide special treatment for IP contracts.

### Personal data

**29** Where personal information or customer data collected by a company in liquidation or reorganisation is valuable, are there any restrictions in your country on the use of that information or its transfer to a purchaser?

The Personal Data Law provides that personal data means information related to the definite subject or related to the subject definable on the basis of such information, recorded via electronic, paper or other tangible forms. The personal data subject is an individual to whom the personal data refers. Personal data can be collected, processed or transferred only upon consent of the personal data subject. Further, personal data can be used by a relevant person only in furtherance of the objectives as they have been stated by such person upon collection of the respective personal data. Accordingly, personal data can be used and transferred to a purchaser if this use and transfer were included in the consent of the personal data subject obtained by the company.

### Arbitration processes

**30** How frequently is arbitration used in liquidation or reorganisation proceedings? Are there certain types of disputes that may not be arbitrated? Can disputes that arise after the liquidation or reorganisation case is opened be arbitrated with the consent of the parties?

Arbitration cannot be used in liquidation and reorganisation proceedings.

## CREDITOR REMEDIES

### Creditors' enforcement

31 | Are there processes by which some or all of the assets of a business may be seized outside of court proceedings? How are these processes carried out?

No, the assets of a business may be seized through court proceedings only.

### Unsecured credit

32 | What remedies are available to unsecured creditors? Are the processes difficult or time-consuming? Are pre-judgment attachments available?

The creditors have the right to apply to the court for taking by the court the following measures to secure the claims of creditors:

- to seize the property (part of the property) belonging to the debtor, including money;
- prohibit the debtor from taking actions that may result in the reduction of its property or in any other way infringe on the interests of creditors;
- to suspend collection under executive or other documents, according to which collection is carried out in an uncontested (acceptance-free) manner; and
- other actions aimed at the preservation of the debtor's property for the period of consideration of the bankruptcy case.

## CREDITOR INVOLVEMENT AND PROVING CLAIMS

### Creditor participation

33 | During the liquidation or reorganisation, what notices are given to creditors? What meetings are held and how are they called? What information regarding the administration of the estate, its assets and the claims against it is available to creditors or creditors' committees? What are the liquidator's reporting obligations?

In the course of rehabilitation and bankruptcy procedures, the interests of all creditors shall be represented by a meeting of creditors established in accordance with the Bankruptcy Law.

The organisation and holding of the meeting of creditors shall be carried out by the administrator, unless otherwise provided by the Bankruptcy Law. The meeting of creditors may be convened on the initiative of the debtor; administrator; the creditors' committee; creditors whose claims amount to at least 10 per cent of the total amount of creditors' claims included in the register, or at least 10 per cent of the total number of creditors.

The first meeting of creditors during the rehabilitation proceedings is held by the temporary administrator during the period of consideration of the rehabilitation case in court after the publication of the register of creditors' claims on the internet resource of the Authorised Body while the first meeting of creditors during the bankruptcy shall be held by a temporary administrator no later than 20 business days from the date of declaring the debtor bankrupt.

The Bankruptcy Law provides that the creditors shall be duly notified at the creditors' meeting. The date, time, place and agenda of the first meeting of creditors during the rehabilitation and bankruptcy proceedings are indicated in the notice of recognition of the creditor's claim (in full or in part) sent to the creditor by the temporary administrator and temporary manager accordingly.

The duly notification on the following meetings of creditors, as well as other persons entitled to participate in the meeting of creditors, are the following:

- publication of an information message about the meeting of creditors in Kazakh and Russian;
- languages on the internet resource of the Authorised Body no later than 10 business days before the date of the meeting of creditors;
- handing over to the creditor personally against signature an information message on the holding of a meeting of creditors in the Kazakh and Russian languages no later than 10 business days before the date of the meeting of creditors; and
- sending a notice to the creditor by registered mail no later than 15 business days before the date of the meeting of creditors.

If the debtor has an internet resource, the publication of an information message in the Kazakh and Russian languages on the specified Internet resource on the meeting of creditors no later than 10 business days before the date of the meeting of creditors is mandatory.

The administrator, and in cases where the creditors' meeting is organised by the creditors' committee, the chairman of the creditors' committee, within two business days from the date of sending the notification of the creditors' meeting to the creditors, sends to the Authorised Body a notification on the meeting of creditors in Kazakh and Russian languages for publication of this information on the internet resource of the Authorised Body, which shall publish the notification of the creditors' meeting on its internet resource within two business days from the date of receipt of the notification.

In the rehabilitation and bankruptcy proceeding, the creditor has the right to request from the rehabilitation and bankruptcy manager information about the financial condition of the debtor during the rehabilitation and bankruptcy proceedings.

In both rehabilitation and bankruptcy proceedings, the rehabilitation manager and bankruptcy manager shall have the right to provide information to the creditors.

After the entry into force of the court decision on the approval of the rehabilitation plan, the rehabilitation manager shall (1) no later than the 15th day of each month, bring to the attention of the members of the creditors' committee information on the financial condition, transactions made for the previous month, provide any information at the request of the creditors' committee; and (1) provide full information on the progress of his activities, the financial condition of the debtor to any creditor of the debtor on the basis of the creditor's written request no later than 10 business days from the date of its receipt.

The bankruptcy manager shall notify the creditor of the progress of the bankruptcy proceedings, the financial condition of the debtor on the basis of the creditor's written request, no later than three business days from the date of receipt of the request.

### Creditor representation

34 | What committees can be formed (or representative counsel appointed) and what powers or responsibilities do they have? How are they selected and appointed? May they retain advisers and how are their expenses funded?

As stated above, in the course of rehabilitation and bankruptcy procedures, the interests of all creditors shall be represented by a meeting of creditors established in accordance with the Bankruptcy Law. The right to participate in the meeting of creditors during rehabilitation and bankruptcy proceedings belongs to creditors whose claims are included in the register of creditors' claims as of the date of the creditors' meeting.

The composition of the creditors' committee is formed and approved by the creditors' meeting. The minimum number of members in the creditors' committee may not be less than three. The creditors' committee includes one creditor from each group of homogeneous creditors. A creditor who does not form a group of homogeneous creditors due to the absence of other creditors who have identical claims

against the debtor may be included in the creditors' committee. It should be noted that the member of the creditors' committee shall not be affiliated with or deprived of the right to vote in the creditors' meeting.

The meeting of the creditors' committee shall be competent with the participation of at least two-thirds of the total number of committee members. The decision of the creditors' committee is taken by a simple majority of votes of the total number of the creditors' committee members on the principle 'one committee member, one vote'. In the case of equality of votes in the voting procedure, the chairman of the creditors' committee shall have the right to a casting vote. The meeting of the creditors' committee is drawn up in minutes.

The creditors' committee during the rehabilitation proceedings exercises the following powers:

- elects a representative of creditors from among the members of the creditors' committee to monitor the actions of the rehabilitation manager;
- requires the rehabilitation manager to provide information on the financial situation of the debtor and the progress of the rehabilitation procedure;
- appeal to the Authorised Body or the court the actions (inaction) of the rehabilitation manager;
- makes a decision on the offset of creditors' claims;
- decides on the sale of receivables or the conclusion of a factoring agreement;
- gives consent to the conclusion of a reverse factoring agreement by the rehabilitation manager;
- takes note of the results of the audit and inventory;
- determines the procedure for the sale of the debtor's property outside the framework of ordinary commercial transactions, including those provided for by the rehabilitation plan;
- approves the estimate of administrative costs and the number of employees involved in the rehabilitation procedure;
- concludes and terminates the contract with the rehabilitation manager;
- approves the agreement of the rehabilitation participant with the rehabilitation manager;
- organises a meeting of creditors on the issue of the removal of the person who is entrusted with the authority to manage the debtor in the rehabilitation procedure;
- organises a meeting of creditors on the termination of the rehabilitation procedure on the grounds provided for by the Bankruptcy Law;
- decides on the need to draw up an opinion on the financial stability of the debtor; and
- other powers provided for by the Bankruptcy Law.

The creditors' committee during the bankruptcy proceedings exercises the following powers:

- exercise operational control over the conduct of the bankruptcy proceedings and the activities of the bankruptcy manager;
- concludes and terminates an agreement with the bankruptcy administrator;
- approves an action plan for conducting bankruptcy proceedings, which is an integral part of the contract;
- makes a decision on the assessment of the bankrupt's property, newly revealed or returned to the estate;
- determines the list of goods, works and services purchased by the bankruptcy administrator;
- decides on the mutual offset of claims between the debtor and the creditor;
- organises a meeting of creditors on the issue of dismissal of the bankruptcy administrator and the simultaneous selection of a new bankruptcy administrator;
- approves the plan for the sale of property;

- makes a decision on putting property up for electronic auction at book value;
- approves the amount of the debtor's receivables that cannot be collected;
- decides to write off movable property on the balance sheet that is absent according to the inventory act;
- determines the conditions for concluding a property lease (lease) contract of the debtor's property; and
- exercises other powers provided for by the Bankruptcy Law.

Creditors during the rehabilitation and bankruptcy proceedings may retain advisers on their own expenses as these expenses are not refundable.

### Enforcement of estate's rights

**35** | If the liquidator has no assets to pursue a claim, may the creditors pursue the estate's remedies? If so, to whom do the fruits of the remedies belong? Can they be assigned to a third party?

No, the Bankruptcy Law does not provide this right during the rehabilitation proceedings.

The obligation to pursue a claim belongs to the bankruptcy manager in the bankruptcy proceedings. The bankruptcy manager shall, not later than seven business days from the date of identification of persons who owe the debtor, submit claims to collect this debt in court, except for cases when the creditors' committee has decided to sell the receivable or conclude a factoring agreement. The fruits of the remedies will be included in the property estate of the bankrupt to satisfy the claims of creditors in priority established by the Bankruptcy Law.

### Claims

**36** | How is a creditor's claim submitted and what are the time limits? How are claims disallowed and how does a creditor appeal? Can claims for contingent or unliquidated amounts be recognised? Are there provisions on the transfer of claims and must transfers be disclosed? How are the amounts of such claims determined?

### Rehabilitation

Creditors' claims are accepted by a temporary administrator at the location of the debtor or at the place of registration of the administrator, indicated by the administrator in the notice of the beginning of his or her activity as an administrator. The creditors' claims against the debtor shall be declared by them not later than within one month from the date of publication of the announcement on the procedure for filing claims by creditors. Creditors' claims shall contain: (1) information on the amount of the claim (separately on the amount of the principal debt, remuneration (interest), forfeit and other penalties, losses). The amount of the claim is determined on the date of the statement of the specified claim; (2) an indication of one of the methods of notification of the meeting of creditors provided for by the Bankruptcy Law. Copies of documents confirming the basis and amount of the demand (court decisions that have entered into legal force, copies of contracts, recognition of the debt by the debtor) with the presentation of original documents for verification shall be attached to the creditor's demand.

A creditor's claim declared later than the term specified above is included in the register of creditors' claims, but such a creditor is deprived of the right to vote in the meeting of creditors until the creditors' claims declared within a month are fully satisfied.

Claims of creditors must be considered by a temporary administrator or rehabilitation manager within 10 working days from the date of their application.

The temporary administrator is obliged to notify each creditor in writing on the results of consideration of creditors' claims (on the recognition or non-recognition of the claim in full or in part indicating the reasons for non-recognition) on the day following the day the decision was made.

In the case of a disagreement with the provisional administrator's decision, the creditor has the right to appeal it to the court considering the rehabilitation case within 10 business days of the date of receipt of notification from the provisional administrator.

### Bankruptcy

Creditors' claims against debtor shall be declared by them within a month from the date of publication of the announcement on the procedure for filing claims by creditors. Creditors' claims shall contain: (1) information on the amount of the claim (separately on the amount of the principal debt, remuneration (interest), forfeit and other penalties, losses). The amount of the claim is determined on the date of the statement of the specified claim; (2) an indication of one of the methods of notification of the creditors' meeting provided for by the Bankruptcy Law. The copies of documents confirming the basis and amount of the demand (court decisions that have entered into legal force, copies of contracts, recognition of the debt by the debtor) with the presentation of original documents for verification shall be attached to the creditor's demand.

It should be noted that the creditor's claim cannot be included in the register of creditors' claims in the part that would not be subject to collection in the manner prescribed by the civil legislation of the Republic of Kazakhstan, due to the expiration of the limitation period.

A creditor's claim filed later than the term specified above is included in the register of creditors' claims, but the creditor is deprived of the right to vote in the creditors' meeting until the creditors' claims declared within a month are fully satisfied.

Claims of creditors shall be considered by an interim manager or bankruptcy manager within 10 working days from the date of filing such claims.

Creditors' claims in rehabilitation and bankruptcy proceedings denominated in foreign currency are accounted for in tenge at the official exchange rate established by the National Bank of the Republic of Kazakhstan, as of the date the court decides to apply the rehabilitation and bankruptcy proceedings.

In both rehabilitation and bankruptcy, the following creditors' claims are not included in the register of creditors' claims:

- claims of creditors, determined by the legislation of the Republic of Kazakhstan on project financing and securitisation, secured by allocated assets, and claims of holders of mortgage bonds, secured by a pledge of the following property: rights of claim under contracts of a housing mortgage loan (including a pledge of mortgage certificates), as well as government securities of the Republic of Kazakhstan in cases when the title to the said bonds arose from their holders or was transferred to them under transactions or other grounds provided for by the laws of the Republic of Kazakhstan;
- claims by creditors for infrastructure bonds secured by a guarantee of the state;
- the claims of the founders (participants) of the debtor, with the exception of their claims for remuneration, payment of compensation under employment contracts, obligations for social contributions to the State Social Insurance Fund, mandatory pension contributions and mandatory professional pension contributions, for contributions or contributions to compulsory social health insurance, or both; and
- claims by secured creditors settled as a result of foreclosure on the subject of the pledge in cases where third parties are the pledgor.

The rehabilitation plan and the restructuring agreement may provide for the assignment of the debtor's claims. The bankruptcy does not provide the possibility to assign the debtor's claims in bankruptcy proceedings. Generally, the amount of the claim will be equal to the amount in which it was at the time of the assignment.

### Set-off and netting

**37** To what extent may creditors exercise rights of set-off or netting in a liquidation or in a reorganisation? Can creditors be deprived of the right of set-off either temporarily or permanently?

The Bankruptcy Law provides that the insolvent debtor and its creditors cannot set off their claims at their discretion upon initiation of rehabilitation or bankruptcy proceedings. Set-off shall be effected, however, by the rehabilitation or bankruptcy manager if the set-off:

- is approved by the decision of the creditor committee;
- does not breach the priority of other creditors;
- is direct;
- is mutual;
- does not involve any other party; and
- is in relation to monetary claims only.

### Modifying creditors' rights

**38** May the court change the rank (priority) of a creditor's claim? If so, what are the grounds for doing so and how frequently does this occur?

As stated above, the register of creditors is formed by the rehabilitation manager or temporary manager. The rehabilitation manager or temporary manager, within two business days of the date of receipt from the bailiffs of a court decision or executive documents on the recovery of money from the debtor, shall notify the creditors in writing on the initiation of the rehabilitation or bankruptcy and the procedure for filing claims. Creditors' claims shall be considered by the rehabilitation manager, temporary manager or bankruptcy manager within 10 business days of the date of filing such claims. Based on the results of consideration of the application and documents provided by the creditor, recognised claims are subject to inclusion in the register of creditors' claims indicating the priority of such claims.

The rehabilitation manager or temporary manager shall notify each creditor in writing on the results of consideration of the creditors' claims (on the recognition or non-recognition of the claim in full or in part, indicating the reasons for non-recognition) on the day following the day of the decision.

In the case of disagreement with the decision of the rehabilitation manager, temporary manager or bankruptcy manager, the creditor shall have the right, within 10 business days of the date of receipt of the notification of the results of the consideration of claims, to appeal against the decision in the court considering the case.

Further, the rehabilitation manager or temporary manager shall send the formed register of creditors' claims, as well as the list of creditors whose claims have not been recognised, to the Authorised Body no later than three business days from the date of the formation of the register of creditors' claims for publication on the Authorised Body's internet resource. The Authorised Body within two business days of the date of receipt of the register of creditors' claims shall post it on its website. The creditor has the right to appeal the size of its claim, as well as the size and grounds of claims of other creditors included in the published register, within 10 business days from the date of its publication. Moreover, the size and grounds of claims of creditors included in the published register may also be appealed by the debtor, an owner of property, a founder (participant) of the debtor within 10 business days of the date of publication of the register.



## Priority claims

**39** | Apart from employee-related claims, what are the major privileged and priority claims in liquidations and reorganisations? Which have priority over secured creditors?

Included in the first tier of creditors and having priority over the secured creditors are:

- claims for compensation for harm caused to life or health, claims on alimony collection;
- claims on remuneration and payment of compensation to persons who worked under an employment contract, with the payment of arrears on social contributions to the State Social Insurance Fund;
- compulsory pension contributions;
- compulsory professional pension contributions, on deductions or contributions to compulsory social health insurance; and
- claims on payment of remuneration to authors for service inventions, utility models, industrial designs.

The claims are settled in the order of priority set forth above.

The administrative and court costs are satisfied out of the priority.

## Employment-related liabilities

**40** | What employee claims arise where employees' contracts are terminated during a restructuring or liquidation? What are the procedures for termination? (Are employee claims as a whole increased where large numbers of employees' contracts are terminated or where the business ceases operations?)

The restructuring proceedings do not generally have an impact on the legal position of employees.

The rehabilitation proceedings do not lead to the discharge of the employees. From the date of entry into force of the court decision on the application of the rehabilitation procedure, the obligations of the debtor to remuneration and payment of compensation to employees are subject to fulfillment by the debtor, the deadline for which is during the period of the rehabilitation procedure.

The satisfaction of creditors' claims on remuneration and payment of compensation to employees that arose before the application of the rehabilitation procedure and included in the register of creditors' claims is carried out in accordance with the schedule for the satisfaction of creditors' claims after the entry into force of the court decision on the approval of the rehabilitation plan. Claims on remuneration and payment of compensation to employees are included to the first level of creditors.

Bankruptcy proceedings obviously lead to the discharge of the employees. Once the court has issued the resolution on recognition of the company as bankrupt, the temporary manager shall notify employees of the proposed termination of employment agreements.

A representative of the employee-creditors shall be mandatorily included on the creditors' committee. The representative shall be elected by the employee creditors by a secret ballot and shall report to the employee creditors on the results of the approval of employment claims in the creditors' register and the results of the consideration of the claims.

Generally, claims on remuneration and payment of compensation to employees that arise are included in the first tier of creditors.

## Pension claims

**41** | What remedies exist for pension-related claims against employers in insolvency or reorganisation proceedings and what priorities attach to such claims?

Restructuring proceedings do not generally have an impact on pension-related issues.

In rehabilitation proceedings from the date of entry into force of the court decision on the application of the rehabilitation procedure, the obligations of the debtor for payment of mandatory pension contributions are subject to fulfillment by the debtor, the deadline for which falls in the period of the rehabilitation procedure. Satisfaction of creditors' claims on mandatory pension contributions that arose before the application of the rehabilitation procedure and included on the register of creditors' claims is carried out in accordance with the schedule for the satisfaction of creditors' claims after the entry into force of the court decision on the approval of the rehabilitation plan. The claims on mandatory pension contributions are included in the first tier of creditors.

In bankruptcy proceedings, the claims on payment of mandatory pension contributions are included in the first tier of creditors.

## Environmental problems and liabilities

**42** | Where there are environmental problems, who is responsible for controlling the environmental problem and for remediating the damage caused? Are any of these liabilities imposed on the insolvency administrator personally, secured or unsecured creditors, the debtor's officers and directors, or on third parties?

Environmental Code provides that when initiating bankruptcy proceedings for a legal entity-user of natural resources carrying out environmentally hazardous types of economic and other activities, a mandatory environmental audit shall be carried out. When proceeding in the case of bankruptcy of a legal entity-user of natural resources, the results of a mandatory environmental audit shall be taken into account. The mandatory environmental audit can be initiated by the interested individuals or legal entities, or both, insurance organisations, investors, an authorised body in the field of environmental protection and other state bodies. Generally, the debtor itself is responsible for controlling the environmental problem and for remedying the damage caused.

## Liabilities that survive insolvency or reorganisation proceedings

**43** | Do any liabilities of a debtor survive an insolvency or a reorganisation?

During restructuring and rehabilitation proceedings, the liabilities of the debtor do survive as these proceedings are aimed to satisfy creditors' claims and resume normal operations of the debtor.

Upon completion of the bankruptcy proceeding, the debtor is liquidated, and accordingly, the claims do not survive. Moreover, the Bankruptcy Law provides that the creditors' claims not satisfied due to the lack of bankruptcy property are considered extinguished. The indicated amounts must be written off by the creditor from the receivables on the basis of the court's decision.

## Distributions

**44** | How and when are distributions made to creditors in liquidations and reorganisations?

The distribution to creditors in rehabilitation proceedings is made in accordance with the indebtedness agreement signed between the debtor and all creditors.

The Bankruptcy Law provides that, in rehabilitation and bankruptcy proceedings, a creditor's claim can be satisfied in cash or through the transfer of property in kind. However, the creditor must express his or her written consent to accept the property in kind against the settlement of the claim.

The schedule for the satisfaction of creditors' claims is drawn up in compliance with the priority and settlement rules established above.

The claims of each priority are satisfied after the full satisfaction of the claims of the previous priority.

## SECURITY

### Secured lending and credit (immovables)

#### 45 | What principal types of security are taken on immovable (real) property?

Kazakh law provides for several methods of securing obligation, including the pledge which is one of the most commonly used forms of security in Kazakhstan. Kazakh law uses the term of the 'pledge' for both immovable and movable property. Further, we use a mortgage for immovable property and pledge for movable property.

A mortgage is a type of security under which the creditor (the pledgee) has the right, in the event of failure by the debtor to perform obligation secured by the pledge, to receive satisfaction from the value of the pledged property, in a priority procedure before other creditors of the person to whom that property belongs (the pledgor), subject to exceptions stipulated by the Civil Code.

The mortgage may be created by contract, either by a separate pledge agreement or through a clause in the agreement, which creates the secured debt. The pledge agreement must be in writing and must contain certain information prescribed by the law. Failure to observe the legislative requirements results in the invalidity of the pledge agreement. An agreement governing the creation of an asset security interest must contain a subject of the collateral, its value, nature, scope and maturity period of the obligation secured by such collateral. An agreement must also clearly identify a party that retains the collateral. The value of the collateral shall be indicated in the national currency.

Unlike the pledge, the mortgage (ie, security over immovable assets and certain registered movable assets (eg, vehicles, aircraft and registered securities) must be registered to be effective). Accordingly, it will be necessary for the lenders to register the mortgage with the relevant registration authorities to ensure that it is effective. No further steps for the perfection of the security interest will be necessary. Registration of a mortgage does not need to be renewed (unless either a secured obligation or composition of collateral is amended).

In general, no governmental or regulatory consents are required for granting security (except for mortgages over strategic assets and certain other specific classes of assets).

The most commonly used forms of mortgage in Kazakhstan are mortgage over land plots and buildings on such land plots, property complex, pledge over plant and machinery (the relevant plant and machinery are deemed to be immovable property if the plant and machinery are inseparable from the land or building on which they are installed).

### Secured lending and credit (movables)

#### 46 | What principal types of security are taken on movable (personal) property?

The rules on mortgage apply to the pledges. In contrast to a mortgage, the registration of a pledge over most types of movable assets is not required for a pledge to be effective. While it is not obligatory to register pledges in relation to most movable assets, this registration grants the creditor a priority right over the collateral. If two or more creditors obtain security interests in the same collateral (whether movable or immovable), law gives priority to security interests in the order in which they are registered and registered pledges generally have priority over unregistered ones regardless of the time of creation. Unregistered pledges generally have priority in the order in which they are created.

The most commonly used forms of pledge in Kazakhstan are pledges over shares or participatory interests, money on bank account, receivables, inventories, wagons, construction in progress (in Kazakh law, construction in progress constitutes movable property (not real estate) until construction is finished, commissioned by the state and registered by the registration authorities of the Ministry of Justice as a unit of immovable property).

## CLAWBACK AND RELATED-PARTY TRANSACTIONS

### Transactions that may be annulled

#### 47 | What transactions can be annulled or set aside in liquidations and reorganisations and what are the grounds? Who can attack such transactions?

Under Kazakh law, the transactions entered into by a company can be invalidated on the general grounds established by the civil legislation and on additional specific grounds established by the Bankruptcy Law ('avoidance of transactions').

The transactions can generally be invalidated, provided that they have been concluded not earlier than three years prior to the initiation of rehabilitation or bankruptcy proceedings by the court. If the bankruptcy procedure has been applied to the debtor as a result of the termination of the rehabilitation procedure, the period provided for above is calculated from the date of entry into force of the court decision on the application of the rehabilitation procedure.

Specific grounds for invalidation of transactions concluded by a company undergoing rehabilitation or bankruptcy proceedings include, among others, the following:

- the price of the transaction or other conditions differ significantly for the worse for the debtor from the price or other conditions under which similar transactions are made in comparable circumstances;
- the transaction does not correspond to the activities of the debtor limited by legal acts of Kazakhstan, foundation documents or activities that have been committed in violation of the competence determined by the charter;
- the property has been transferred (including for temporary use) for free or at a price that essentially differs, to the detriment of the debtor, from the price for identical or homogeneous goods under comparable economic conditions, or without valid reasons to the detriment of the creditors' interests;
- if a transaction is completed within six months prior to the bankruptcy or rehabilitation proceedings and entailed the preferable satisfaction of claims of one creditor before the others;
- gift agreements for the property of the debtor, if such a transaction essentially differs from the transactions committed one year prior to the rehabilitation or beginning of bankruptcy proceedings; and
- if a transaction is made without the intention of creating corresponding legal consequences for such a transaction, to the detriment of the interests of creditors.

In the case of detection of any of the transactions indicated above, an administrator shall (itself or upon request of the creditor who has detected the rogue transaction) challenge it in court within 10 business days of the date of its detection.

When the transaction is invalidated, the defendant shall return everything received under the transaction. If it is impossible to make the return in kind, the defendant must compensate the cost of the relevant property, works performed or services rendered. In this case, the defendant acquires the right to claim against the debtor, which is subject to satisfaction according to the procedure provided by the Bankruptcy Law.

Project finance and securitisation transactions, and transactions entered into the trade system of the stock exchange by open bid tender are exempt from the above statutory limitations.

### Equitable subordination

- 48 | Are there any restrictions on claims by related parties or non-arm's length creditors (including shareholders) against corporations in insolvency or reorganisation proceedings?

The Bankruptcy Law provides that the claims of the founders (participants) of the debtor, with the exception of their claims for remuneration, payment of compensation under employment contracts, obligations for social contributions to the State Social Insurance Fund, mandatory pension contributions and mandatory professional pension contributions, for contributions or contributions to compulsory social health insurance are not included to the register of creditors' claims.

## GROUPS OF COMPANIES

### Groups of companies

- 49 | In which circumstances can a parent or affiliated corporation be responsible for the liabilities of subsidiaries or affiliates?

The Kazakhstan laws provide for subsidiary liability of the founder (participant) for bringing the debtor to bankruptcy, premeditated bankruptcy. Premeditated bankruptcy is the action of a founder (participant) in the personal interests or interests of other persons to evade the fulfilment of its obligations to creditors by alienating or hiding property within three years before the legal entity is declared bankrupt.

The founder (participant) of premeditated bankruptcy by way of administrative proceedings shall bear subsidiary liability to creditors with their property in the amount of damage established by a judicial act, on the basis of which the legal entity was found guilty of premeditated bankruptcy by way of administrative proceedings.

A bankruptcy manager, within 10 business days from the date of entry into force of a judicial act on bringing the founder (participant) to administrative liability, shall apply to the court with a claim against such legal entity for bringing it to subsidiary liability. The creditor also has the right to apply to the court with a claim if the founder (participant) is found guilty of premeditated bankruptcy in administrative proceedings after the completion of the bankruptcy procedure.

In addition to the subsidiary liability before the creditors, the founder (participant) may be brought to administrative liability in the amount of 400 monthly calculation indices (approximately US\$2,600).

### Combining parent and subsidiary proceedings

- 50 | In proceedings involving a corporate group, are the proceedings by the parent and its subsidiaries combined for administrative purposes? May the assets and liabilities of the companies be pooled for distribution purposes?

No.

## INTERNATIONAL CASES

### Recognition of foreign judgments

- 51 | Are foreign judgments or orders recognised, and in what circumstances? Is your country a signatory to a treaty on international insolvency or on the recognition of foreign judgments?

As a general rule, foreign court judgments may be recognised and enforced only if provided for by law or an international treaty with Kazakhstan (based on reciprocity). Kazakhstan is not a party to any multilateral or bilateral treaties with most western jurisdictions for the mutual enforcement of court judgments. Consequently, should a judgment be obtained from a court of a western jurisdiction (for example, England) it is unlikely to be enforceable in the Kazakhstan courts. In contrast with western jurisdictions, Kazakhstan has ratified the conventions and entered into bilateral agreements with the Commonwealth of Independent States and some European countries, for example, Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1993), and the Chisinau Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of (2002).

### UNCITRAL Model Law

- 52 | Has the UNCITRAL Model Law on Cross-Border Insolvency been adopted or is it under consideration in your country?

No, however, there have been precedents when Kazakh insolvency proceedings have been recognised in foreign jurisdiction based on the UNCITRAL Model Law on Cross-border Insolvency. For instance, BTA Bank notified that the decision of the Almaty Special Financial Court, dated 16 October 2009 on bank restructuring, was acknowledged as legitimate in the US and UK (a US court and the Supreme Court of England and Wales acknowledged the restructuring process as legitimate in the US and England and Wales, respectively), based on the UNCITRAL Model Law on Cross-border Insolvency dated 30 May 1997, adopted by the UK and US.

### Foreign creditors

- 53 | How are foreign creditors dealt with in liquidations and reorganisations?

There are no special provisions regulating the foreign creditors, the general provisions on creditors established by the Bankruptcy Law apply.

### Cross-border transfers of assets under administration

- 54 | May assets be transferred from an administration in your country to an administration of the same company or another group company in another country?

No.

### COMI

- 55 | What test is used in your jurisdiction to determine the COMI (centre of main interests) of a debtor company or group of companies? Is there a test for, or any experience with, determining the COMI of a corporate group of companies in your jurisdiction?

No.

### Cross-border cooperation

- 56 Does your country's system provide for recognition of foreign insolvency proceedings and for cooperation between domestic and foreign courts and domestic and foreign insolvency administrators in cross-border insolvencies and restructurings? Have courts in your country refused to recognise foreign proceedings or to cooperate with foreign courts and, if so, on what grounds?

Companies incorporated in Kazakhstan cannot enter into insolvency proceedings in other jurisdictions, and insolvency processes commenced elsewhere in relation to a Kazakh company would not be recognised in Kazakhstan. However, any restructuring agreements to be executed with foreign creditors by a Kazakh debtor may, generally, be governed by foreign law as they have foreign nexus.

### Cross-border insolvency protocols and joint court hearings

- 57 In cross-border cases, have the courts in your country entered into cross-border insolvency protocols or other arrangements to coordinate proceedings with courts in other countries? Have courts in your country communicated or held joint hearings with courts in other countries in cross-border cases? If so, with which other countries?

No.

### Winding-up of foreign companies

- 58 What is the extent of your courts' powers to order the winding-up of foreign companies doing business in your jurisdiction?

No, Kazakh courts have no power to order the winding-up of foreign companies doing business in Kazakhstan if a company does not have registered as legal entity in Kazakhstan.

## UPDATE AND TRENDS

### Trends and reforms

- 59 Are there any emerging trends or hot topics in the law of insolvency and restructuring? Is there any new or pending legislation affecting domestic bankruptcy procedures, international bankruptcy cooperation or recognition of foreign judgments and orders?

On 29 December 2019, quite extensive amendments to the Bankruptcy Law were adopted and entered into force on 10 January 2020. These amendments were developed during past two years, but the concept of the amendments is still the same – attempts to legally balance the rights of creditors and debtors, to provide for effective protection, both in relation to the assets of creditors and in relation to the assets of debtors. The amendments provide for the abolition of the procedures for 'resolution of insolvency' and 'accelerated rehabilitation', which were rarely met in practice, the grounds for submitting an application for rehabilitation and bankruptcy proceedings, etc, thus the practice is not yet well established to highlight any problems.

To date, there is no pending legislation affecting domestic bankruptcy procedures, international bankruptcy cooperation or recognition of foreign judgments and orders.

### Coronavirus

- 60 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns?

On the initiative of the President of the Republic of Kazakhstan Kassym-Zhomart Tokayev, the government of Kazakhstan adopted a resolution on suspension from 11 May 2020 until 1 October 2020 of the filing of applications for bankruptcy of legal entities and individual entrepreneurs by creditors represented by government bodies and subjects of the quasi-public sector.

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